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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1984

RICHARD (DICK) J. ACKERMAN, PETITIONER

v.

JULIE GILES.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I. Whether, under the facts and circumstances of this case, the "limited strip" or "disrobement" search conducted herein is justified as a reasonable search pursuant to the Fourth Amendment to the United States Constitution.

A. Whether the scope of the "limited strip" search was justified under the facts and circumstances of this case.

B. Whether the security and safety interests of jails justify the routine "limited strip" or "disrobement" search conducted herein.

II. Whether entry into the security perimeter of the jail, or the seriousness of the offense, determines who can be subjected to a routine "limited strip" or "disrobement" search as was conducted in this case.

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IN THE SUPREME COURT OF THE UNITED STATES
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RICHARD (DICK) J. ACKERMAN, PETITIONER

v.

JULIE GILES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Richard (Dick) J. Ackerman, petitioner herein, prays for a writ of certiorari to review the judgement of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 746 F.2d 614, (Appendix A, infra). The opinion of the district court is reported at 559 F.Supp. 226 (Appendix B, infra).

JURISDICTION

The judgement of the court of appeals was entered on November 2, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but on probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

Julie Ann Giles [hereinafter Giles] was stopped by an Idaho Falls, Idaho police officer because her vehicle registration had expired. A routine computer check revealed that an arrest warrant had been issued for Giles for

failure to pay 19 parking tickets.

Giles was placed under arrest, and was transported by patrol car to the Bonneville County Jail booking area, where she was given a copy of the arrest warrant and was issued a citation for the expired registration. When jail officials asked Giles if she would be bonding out, Giles responded in the negative. Neither the arrest, nor the subsequent incarceration for failing or refusing to make bail, has been challenged herein.

Approximately 20 minutes later jail officers began routine booking procedures, including photographing, fingerprinting, and searching Giles.

The search consisted of taking Giles to a private room, having her disrobe, and

change into a jail uniform prior to entering the security perimeter of the jail. Giles was not required to bend over to expose her body cavities or genitalia. The matron conducting the search did not touch Giles at any time.

Giles does not dispute that the search was conducted in a reasonable manner and that "all due courtesy" was extended to her.

Giles brought action under 42 U.S.C. Section 1983 against the county sheriff and others alleging deprivation of constitutional rights in the limited strip search that was conducted.

The district court, Callister, Chief Judge, balanced Gile's interest in personal privacy against the safety and security interests of the jail, including

the right of other inmates to be protected from any danger that might result from a search which allowed weapons, drugs or communicable diseases into the jail.

The district court was of the opinion that the determinative factor on the issue of whether a search could be initiated was whether the offender must enter the security perimeter of the jail, not merely the seriousness of the offense charged. The court concluded that the search that was conducted did not violate the constitutional rights of Giles and therefore granted the defendant's motion for summary judgement.

The Court of Appeals for the Ninth Circuit, in a per curiam decision, held that arrestees for minor offenses may be

subjected to a strip search only if jail officials have a reasonable suspicion that the particular arrestee is carrying or concealing contraband or suffering from a communicable disease. Then, finding an absence of reasonable suspicion, the Ninth Circuit held that the search conducted violated the Fourth Amendment of the United States Constitution.

REASONS FOR GRANTING THE PETITION

I. THE SEARCH CONDUCTED HEREIN IS LESS INTRUSIVE THAN A TRADITIONAL STRIP SEARCH AND IS JUSTIFIED UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

A. The Scope Of The Particular Intrusion.

The "limited strip" or "disrobement" search conducted in this case is less intrusive than the routinely conducted searches that were upheld by this Court in Bell v. Wolfish, 441 U.S. 520, 99 S.

Ct. 1861, 1884, 60 L.Ed.2d 447 (1979).

In this case, Giles was only required to remove her clothes, but was not required to bend over and expose the surfaces of her body cavities or genitalia.

But traditional strip searches include visual examinations of body cavities as illustrated in Bell v. Wolfish, supra at p. 1854, including footnote 39, where this Court upheld the practice of routine strip searches of jailees, including the requirement that the persons searched expose their body cavities for visual inspection, after contact visits with a person from outside the institution.

The court of appeals did not differentiate between the scope of the

limited strip or disrobement search conducted in this case and the scope of traditional strip searches.

The difference in terms of the impact of the scope of intrusion on the privacy right of the person searched is self-apparent.

Whether or not more intrusive searches incident to incarceration should require individualized suspicion is not at issue here. Perhaps the standard enumerated herein of individualized reasonable suspicion that the arrestee is concealing contraband should be applied to strip searches that include a visual examination of the exterior surfaces of the rectal and vaginal areas. And perhaps the rationale of this Court in Schmerber v. State of California, 384 U.S. 757, 86 S.Ct. 1826 (1966), should

mandate the existence of a clear indication that contraband will be found in a body cavity prior to a doctor conducting searches of the interior of vaginal or rectal cavities.

But the scope of the "limited strip" or "disrobement" search conducted herein was substantially less intrusive to the privacy interests of the person searched than the scope the traditional strip search on the privacy interests.

Therefore, less justification should be required for initiating such search.

B. The Justifications For Initiating the Search

The security and safety interests justifying the limited search herein, conducted incident to arrest and

incarceration, are greater than those identified in Bell v. Wolfish, supra.

The searches upheld by this Court in Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979), were justified by the governmental interest in both discovering and deterring the smuggling of weapons, drugs, and other contraband into the institution.

Searches incident to incarceration are also justified by the governmental interest in preventing the introduction of contraband into the institution. But searches conducted when the arrestee initially enters the security perimeter of the jail are also justified by the safety interest of the jail in identifying the existence of any pre-incarceration injuries and in watching

for obvious signs of communicable diseases.

The district court herein, Callister, Chief Judge, was of the opinion that traffic offenders, as a group, could include people who have communicable diseases, people who use drugs and might be carrying them in concealed areas on their bodies, or people who use weapons and might be carrying them on their bodies. The District Court also recognized the right of other inmates at the jail to be protected from any danger that might result from a failure to search that allowed contraband or communicable diseases into the jail. Giles v. Ackerman, 559 F.Supp. 226, 228-9 (D.Id. 1983). See also Wilson v. City of Kotzbue, 627 P.2d 623 (Alaska 1981).

Failure to identify a pre-incarceration injury, such as a broken arm or a stab wound, could result in delays in obtaining the required medical treatment for the arrestee and might subject the jail administration to unnecessary civil liability. Failure to identify communicable diseases, especially venereal diseases with easily recognizable symptoms, could result in the unnecessary spread of such diseases to the inmate population.

Requiring the arrestee to change into a jail uniform upon arrival at the jail is a widespread and routine jail practice. The examination of all items removed from an arrestee's person or possession and listing or inventorying them is a reasonable administrative

procedure. Illinois v. Lafayette, 103 S.Ct. 2605, 2608-10 (1983).

A jail employee of the same sex as the arrestee must observe the arrestee's disrobing and must generally observe the arrestee's body to: (1) identify pre-incarceration injuries; (2) to look for obvious signs of communicable diseases; and (3) to prevent the transfer of contraband between street clothes and the jail uniform. The search must be conducted in a private place and must be conducted in a professional and reasonable manner.

The court of appeals invalidation of the search conducted in this case was clearly incorrect because the search that was conducted was justified by the security and safety interests of the

jail, and the scope of the warrantless search was commensurate with the rationale that excepted the search from the warrant requirement. See Chimel v. State of California, 395 U.S. 752, 762, 89 S.Ct. 2034, 2039, 23 L.Ed.2d 685 (1969)

II. ROUTINE SEARCHES, CONDUCTED INCIDENT TO CUSTODIAL ARREST AND INCARCERATION DO NOT REST ON PROBABLE CAUSE AND A "LIMITED STRIP" OR "DISROBEMENT" SEARCH, WITHOUT AN ACCOMPANYING VISUAL BODY CAVITY SEARCH, CAN BE CONDUCTED UPON ALL ARRESTEES WHO ENTER THE SECURITY PERIMETER OF A JAIL.

The district court, Callister, Chief Judge, was of the opinion that the factor which determines when a search can be initiated in the jail setting is whether the offender must enter the security perimeter of the jail, not merely the seriousness of the offense charged.

The Ninth Circuit's reliance on the relative seriousness of the offense as a key factor in determining the reasonableness of a search conflicts with the decisions of this Court.

In United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 476, 38 L.Ed.2d 427 (1973), this Court specifically elected to treat all custodial arrests alike for the purpose of justifying a search and specifically rejected an attempt to qualify the breadth of the general authority to search incident to a lawful custodial arrest on the assumption that persons arrested for less serious offenses are less likely to possess dangerous weapons than are persons arrested for crimes.

The search challenged herein was

conducted incident to an uncontested and valid custodial arrest and incident to incarceration.

It is well-settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment. Illinois v. Lafayette, 103 S.Ct. 2605, 2608-10 (1983); United States v. Edwards, 415 U.S. 804, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974); Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488, 38 L.Ed.2d 456 (1973); United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 476, 38 L.Ed.2d 427 (1973).

In United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 476, 38 L.Ed.2d 427 (1973), this Court said, "The authority to search the person incident to a

lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situtation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based upon probable cause to arrest is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to arrest requires no additional justification. It is the fact of lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a

'reasonable' search under that Amendment."

This Court has recognized the existence of a continuum of interests from arrest to incarceration. Searches along that continuum, such as inventory searches of the arrestee's possessions, have been recognized by this Court as being incidental administrative steps along the continuum between arrest and incarceration and as being no more than a continuation of the custody inherent in the arrest status. Illinois v. Lafayette, 103 S.Ct. 2605, 2608-10 (1983); South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976); United States v. Edwards, 415 U.S. 804, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974).

In United States v. Edwards, 415 U.S. 804, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974), this Court said that searches and seizures that could be made on the spot at the time of the arrest may legally be conducted when the accused arrived at the place of detention.

In Illinois v. Lafayette, 103 S.Ct. 2605, 2608-10 (1983), this court recognized that there may be circumstances where even pre-incarceration searches may be justified at the police station.

In Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), this Court recognized that "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a reaction

justified by the considerations underlying our penal system." [citations omitted].

This Court has long recognized that the Fourth Amendment prohibits only unreasonable searches. Caroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 283, 69 L.Ed.2d 543 (1925).

It is clear from the foregoing cases of this Court that the district court judge's opinion that the "limited strip" or "disrobement" search conducted by the jail matron in this case was reasonable. Such searches are reasonable if they are conducted in a proper place and in a reasonable manner. They are clearly justified by the rulings of this Court and by the considerations underlying our penal system.

The Ninth Circuit acknowledged that they are not free to substitute their views on proper jail administration for that of the jail's actual administrators. Giles v. Ackerman, 746 F.2d 614, 617 (1984), citing Block v. Rutherford, 104 S.Ct. 3227, 3232, 82 L.Ed.2d 438 (1984).

Yet the Ninth Circuit decision in this case not only substituted that court's views on jail administration for those of the jail's actual administrators, but they also substituted their opinions for the applicable decisions of this Court.

CONCLUSION

The petition for writ of certiorari should be granted in this case because the ruling of the Ninth Circuit Court of

Appeals mandates that the disrobing of minor offenders entering the security perimeter of the jail to exchange street clothing for a jail uniform is a "strip search."

Furthermore, the Ninth Circuit established a requirement of particularized reasonable suspicion that the person arrested on a minor offense has a communicable disease or is concealing contraband, such as weapons or drugs, before such "strip searches" can be conducted by jail personnel.

The standard thus set by the Ninth Circuit for minor offenders is a standard not yet reached by any circuit or district court in the nation and which was specifically rejected by this Court in United States v. Robinson, 414

U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973).

If this decision is allowed to stand, jail administrators within the jurisdiction of the Ninth Circuit Court of Appeals will be required to allow many minor offenders to change from street clothes into a jail uniform in complete privacy. The serious implications of such a policy are so obvious that further comment should be unnecessary.

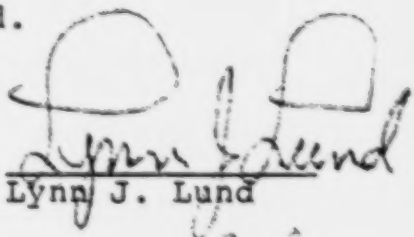
The Ninth Circuit policy subjects jail administrators to the probability of planned abuses by those who commonly choose to battle the "establishment."

Indeed, such a policy would encourage jail inmates to arrange for an innocent-looking person, to deliberately commit

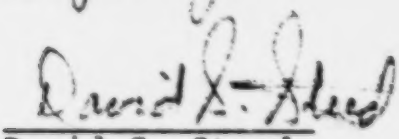
traffic offenses as a pretext to smuggle weapons or drugs into the jail.

Therefore, we respectfully request that this Court grant this petition for certiorari in this case and resolve these important and far-reaching constitutional questions.

Respectfully submitted.



Lynn J. Lund



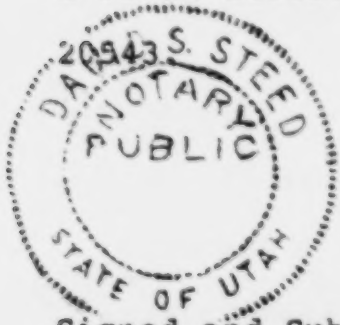
David S. Steed

Attorneys for
Petitioner

Signed and Submitted
January 31, 1985

CERTIFICATE OF MAILING

I certify that, pursuant to Rule 28.2 of the Rules of the Supreme Court of the United States, this petition for writ of certiorari was mailed by me on January 31, 1985 postage prepaid at the United States Post Office located in Provo, Utah and addressed to the Clerk of the Supreme Court, 1 First Street, N. E., Washington, D.C. 20543.



Lynn J. Lund
Attorney At Law

Signed and Subscribed before me this 31st day of January 1985.

My Commission
Expires: 12/15/85

Notary Public

APPENDIX A

614 746 F.2d 614

Julie Ann GILES, Plaintiff-Appellant,

v.

Richard (Dick) J. Ackerman, Sheriff of Bonneville County, et al., Defendants-Appellees

NO. 83-3751

United States Court of Appeals, Ninth Circuit

Argued and Submitted Oct. 6, 1983

Decided Nov. 2, 1984

Civil Rights action was brought by individual arrested on minor traffic offenses alleging that her constitutional rights were violated by her having been subjected to strip search. The United States District Court for the District of Idaho, Marion J. Callister, Chief Judge, 559 F.Supp. 226, entered summary judgement for the defendants and plaintiff appealed. The Court of Appeals held that:

(1) arrestees for minor traffic offenses may be subjected to strip search only if jail officials have reasonable suspicion that particular arrestee is carrying or concealing contraband or suffering from communicable disease, and (2) arrestee for traffic violation was unconstitutionally subjected to strip search before being booked into jail where there was no individualized suspicion that she was carrying contraband or in any way threatening jail security.

Reversed and remanded.

1. Searches and Seizures Key 7(12)

Arrestees for minor offenses may be subjected to strip search only if jail officials have reasonable suspicion that particular arrestee is carrying or concealing contraband or suffering from communicable disease.

2. Searches and Seizures Key 7(12)

Arrestee for traffic violation was unconstitutionally subjected to strip search

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before being booked into jail where there was no individualized suspicion that she was carrying contraband or in any way threatening jail security. U.S.C.A. Const. Amend. 4.

Stephen L. Pevar, American Civil Liberties Union, Denver, Colo., Larry Goins, Hopkins, French, Crockett & Springer, Idaho Falls, Idaho, for plaintiff-appellant.

Lynn J. Lund, Bountiful, Utah, for defendants-appellees.

Appeal from the United States District Court for the District of Idaho.

Before BROWNING, Chief Judge, HUG, and TANG, Circuit Judges.

PER CURIAM:

This case concerns the constitutionality of the Bonneville County Jail policy to subject persons booked into the county jail on minor traffic offenses to a strip search. After her arrest for a traffic violation, Julie Giles was strip searched by an official at the Bonneville County Jail in Idaho Falls, Idaho. The search was conducted pursuant to a jail policy that all persons booked into the jail be strip searched. The officer who searched Giles had no individualized suspicion that Giles was carrying contraband or that she in any way threatened jail security.

[1,2] We hold that arrestees for minor offenses may be subjected to a strip search only if jail officials have a reasonable suspicion that the particular arrestee is carrying or concealing contraband or suffering from a communicable disease. Because no such suspicion existed in Gile's case, the officer who searched Giles violated her rights under the fourth amendment.

I

The parties stipulated to the following facts. Giles was stopped by a sheriff's deputy in Idaho Falls, Idaho, because her vehicle registration had expired. A routine computer check revealed that an arrest warrant had been issued for Giles because of several outstanding parking tickets.1 The officer arrested Giles and placed her in the patrol car. He

described her as cooperative and neither frisked her nor inspected the purse she carried.

> FN1. Giles indicates that the parking tickets were issued to her husband and that she had no knowledge of them.

Giles was taken to the Bonneville County Jail. She waited approximately twenty minutes and was allowed to move freely around the building. During this period, jail officials did not handcuff Giles, frisk her, or subject her to a patdown search. She was permitted to keep her purse, which was not searched.

Giles was unable to post bond immediately because she did not have sufficient cash with her and could not reach her husband. She was booked into the jail, and in compliance with county policy she was required to remove her

clothes and was strip searched. Within a few hours after her arrest, Giles posted bond and was released.

Giles brought this action against the sheriff, the county, and the county commissioners (collectively, "the County") under 42 U.S.C. section 1983. She claimed enforcement of the jail policy requiring that all arrestees be strip searched had violated her fourth amendment rights. She sought a declaration that the policy was unconstitutional, an injunction against its continued enforcement, and damages.

After considering cross-motions for summary judgment, the district court granted judgment for the defendants. Giles v. Ackerman, 559 F.Supp. 226 (D.Idaho 1983). The court held that the strip search did not violate Gile's

constitutional rights. We reverse.

II

Section 501.03(5) of the jails Policies and Procedures Manual provides as follows:

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> The subject will then be placed in the booking cell, and all items and clothing removed, strip searched, and all property receipted for on the arrest record.

The policy is applied to all male and female arrestees who are to be placed in the general population. Jail personnel are given instructions on the conduct of the search. The instructions require a visual examination of body cavities. In Giles case, however the officer did not follow these instructions, but limited her examination to a skin search. Giles contends the skin search violated her fourth amendment rights. She also

claims that the cavity search policy is unconstitutional on its face.2

> FN2. As the district court pointed out, it is not necessary to consider whether the County's policy was constitutional as applied to body cavity searches since Giles body cavities were not searched. 559 F.Supp. at 228. However, since we hold that reasonable individualized suspicion is required before a strip search may be lawfully conducted, it is obvious that even more intrusive searches would require no less.

The County argues that the warrantless strip search of Giles was lawful because it was incident to arrest. It relies on United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), which held that a "full search of the person" incident to arrest is per se reasonable under the fourth amendment. Id. at 235, 94 S.Ct. at 477. However, the "full search" in that case was limited to a pat down and an examination

of Robinson's pockets. The search involved no strip search or bodily intrusion, and nothing in the opinion implies that the court intended "full search" to include such intrusions. That implication would be inconsistent with Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966), which held the fourth amendment protected an arrestee's privacy interests and thus barred intrusions into the body "which are not justified in the circumstances or which are made in an improper manner." Id. at 768, 86 S.Ct. at 1834. The taking of a blood sample from Schmerber was not authorized as incident to his arrest, but required independent justification. Schmerber thus implies that intrusions into the arrestee's body, including body cavity searches as authorized by the County's policy, are not authorized by

arrest alone. See 2 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment section 5.3(c)(1978). Similarly, we see nothing in Robinson or Schmerber that authorizes the somewhat less intrusive strip search as incident to arrest. Accord Mary Beth G. v. City of Chicago, 723 F.2d 1263 (1983).

The County next contends that the policy is authorized by the Supreme Court's decision in Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). In Bell, pretrial detainees housed in a custodial facility challenged a policy requiring all inmates to submit to strip searches following contact visits with persons from outside the institution. The policy was designed to prevent visitors from smuggling weapons and contrand into the facility. The Court

characterized the issue raised by the inmate's challenge to the policy as "whether visual body cavity inspections ... can ever be conducted on less than probable cause." Id. at 560, 99 S.Ct. at 1885 (emphasis in original). To resolve this issue, the Court balanced the security interests of the institution against the privacy interests of the inmates. "Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." Id. at 559, 99 S.Ct. at 1884. Applying those factors, the Court in Bell concluded that a standard less stringent than probable cause could justify strip searches or body cavity searches of inmates at a pretrial detention facility. Id. at 560, 99 S.Ct. at 1885.

We reject the County's contention that Bell signifies that all strip searches are constitutionally acceptable. Instead, Bell employed a mode of analysis developed by the Court in Delaware V. Prouse, 440 U.S. 648, 654, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660 (1979):

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> Thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Implemented in this manner, the reasonableness standard usually requires, at a minimum, that the facts upon which an intrusion is based be capable of measurement against "an objective standard," whether this be probable cause or a less stringent test. (Footnotes omitted.)

We must therefore balance the security needs of local jail facilities against the privacy interests of arrestees

charged with minor offenses to determine what objective standard authorizes strip searching of arrestees. See Mary Beth G., 723 F.2d at 1273; Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982).

The parties do not dispute the nature of the intrusion. They agree that Giles privacy was invaded in a frightening and humiliating manner. They also agree that the search was conducted in an appropriate place and "with all due courtesy." At issue is the County's justification for the search policy.

The inmates in Bell were charged with offenses more serious than minor traffic violations, and they were therefore detained for substantial pretrial periods. The Court observed that smuggling of drugs, weapons, and other contraband into the facility was common.

Bell, 441 U.S. at 559, 99 S.Ct. at 1884. The institution's strip search policy was designed to deter inmates from receiving contraband from visitors. Id; see also Block v. Rutherford, __U.S.__, 104 S.Ct. 3227, 3231, 82 L.Ed2d 438 (1984). Officials at the facility had established that smuggling of contraband constituted a serious risk to inmates and employees and had shown the policy was an effective deterrent. Bell, 441 U.S. at 559, 99 S.Ct. at 1884.

In contrast, the County has not demonstrated that its security interests warrant the serious invasion of privacy inflicted by its policy. The record reveals that the incidence of smuggling activity at the Bonneville County Jail is minimal. Evidence before the trial court indicates that of approximately 3,500 persons searched at the jail in

the preceeding 18-month period, only eleven persons had concealed anything that warranted a report, including the concealment of cigarettes. Defendants cite as significant only one discovery in the course of 3,500 strip searches: a knife was found cradled in the small of the back of an arrestee. Defendants also cite two instances from other parts of the country (California and Mississippi) in which matches were concealed on the person of detainees.

Moreover, there is no indication whatsoever that the County's strip search policy could or did have any deterrent effect. Visitors to the detention facility in Bell could plan their visits and organize their smuggling activities. In contrast, arrest and confinement in the Bonneville County Jail are unplanned events, so the policy could not possibly

deter arrestees from carrying contraband.

We acknowledge the difficult security problems present in some local jail facilities. We recognize also that we are not free to substitute our views on proper jail administration for that of the jail's actual administrators. Block, 104 S.Ct. at 3232. We conclude, however, that strip searching of every arrestee booked into the Bonneville County Jail is not necessary to protect the institution's security interest. Balancing that interest against the privacy interests of arrestees, we hold that arrestees charged with minor offenses may be subjected to a strip search only if jail officials possess a reasonable suspicion that the individual arrestee is carrying or concealing contraband. Reasonable suspicion may be based on such factors as the nature of

the offense, the arrestee's appearance and conduct, and the prior arrest record. See generally Mary Beth G., 723 F.2d at 1273; Logan v. Shealy, 660 F.2d 1007, 1013 (4th Cir. 1981), cert. denied, 455 U.S. 942, 102 S.Ct. 1435, 71 L.Ed.2d 653 (1982); Hunt v. Polk County, 551 F.Supp. 339, 342-45 (S.D. Iowa 1982); Smith v. Montgomery County

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547 F.Supp. 592, 598-99 (D.Md. 1982); Tinetti v. Wittke, 479 F.Supp. 486, 490-91 (E.D.Wis. 1979), aff'd. 620 F.2d 160 (7th Cir.1980).

This more limited use of strip searches will protect the privacy interests of arrestees who pose no security threat to the facility, but will enable jail officials to identify and search those

who may pose such a risk. Of course, the County remains free to enhance its security by implementation of procedures that are less intrusive than strip searches, including the use of pat down searches and metal detectors and the segregation of inmates to isolate arrestees for minor offenses from the general jail population.

Applying this standard to Gile's claims, we hold the search violated her rights under the fourth amendment. No suspicion existed that Giles was carrying contraband. Her offense was minor and was related neither to drugs nor to weapons. She had no prior record. Both the arresting officer and the officer who conducted the search indicated Giles was cooperative and orderly. The officer who strip searched Giles states she would not have conducted

the search had the policy not required it, and she limited the scope of the search because Gile's appearance and demeanor convinced the officer that no contraband would be found.3 Weighing the intrusiveness of the strip search against the minimal showing of need we conclude that the indiscriminate search of Giles violated her fourth amendment rights.

FN3. Officer Shumway testified on deposition as follows:

Q Would you have strip searched Julie if you were not compelled to by the Policies Manual?

A If we weren't compelled to, no, I probably would not have. If we'd had a facility which she could have gone in in her clothes; if we had that type of facility for people, where they could go in their own clothing, there would be no problem at all.

Q Okay, I have two questions based on what you just said. Number one, why wouldn't you have strip searched her if you

didn't have to, what is it about Julie?

A She was well dressed. She was clean and neat. Her charges weren't the type--you know, like I said, if we had a facility for that type of charge and for the minor people, it would be no problem.

Q So you consider the nature of the charge in considering whether a strip search is advisable, among other considerations?

A This would be the hypothetical thing that I am saying. Not with our policies and procedures it doesn't matter--

Q Yes, I understand.

A But if it were a case of whether you could or couldn't, I would not have strip searched Julie Giles, no, because of the charges and from everything considered.

Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981), applied Bell to a very similar county jail strip search policy and arrived at the same conclusion. Logan was arrested for drunk driving and

for refusal to take a breathalyzer test without first being allowed to contact her attorney. She was transferred to the detention center where she repeated her request to contact her attorney. In accordance with county policy she was allowed the phone call only after she had been strip searched. The Fourth Circuit held the strip search policy "conclusively....unconstitutional under the standards laid out in Bell v. Wolfish, 441 U.S. 520 [99 S.Ct. 1861, 60 L.Ed.2d 447]...." 660 F.2d at 1013. The court continued:

> Strip searches of detainees are constitutionally constrained by due process requirements of reasonableness under the circumstances....Logan's strip search bore no such discernable relationship to security needs at the Detention Center that, when balanced against the ultimate invasion of personal rights involved, it could be reasonably thought justified. Id.

The Logan court noted that Logan's

offense--more serious than that of Giles--"was nevertheless one not commonly associated by its very nature with the possession of weapons or contraband; ....when strip-searched she had been at the Detention Center for one and one-half hours without even a pat-down search." Id. Although Giles was placed in the general jail population and Logan was not, another court has correctly pointed out that "[d]efendants' heavy reliance on the intermingling of its temporary detainees with the general [jail] population is misplaced..." because such intermingling is both limited and avoidable. Smith v. Montgomery County, 547 F.Supp. at 598-99.

III

Our conclusion that Gile's constitutional rights were violated requires us to

reverse the summary judgment for the defendants and to remand the case for trial and determination of a remedy. As to the individual defendants, there remain substantial questions of fact to be determined at trial concerning their liability and potential defenses of immunity and good faith. As to the County, it is apparent from our holding that the violation of Giles constitutional rights was the result of a fixed policy of the County. The liability of the County has thus been established as a matter of law. The remaining questions are the amount of damages to which Giles is entitled and whether injunctive or declaratory relief should be granted.

Giles request for injunctive and declaratory relief does not raise the issue of standing considered by the Supreme Court in City of Los Angeles v.

Lyons, 461 U.S. 95, 103 S.Ct 1660, 75 L.Ed.2d 675 (1983). In Lyons, the plaintiff's damages claim had been severed from his claim for injunctive relief. 461 U.S. at ___ n.6, 103 S.Ct. at 1667 n.6. The court was thus required to consider whether his request for an injunction, standing alone, presented a case or controversy. Gonzales v. City of Peoria, 722 F.2d 468, 481-82 (9th Cir. 1983). In contrast, it is clear that Giles has standing to bring her damage action, and there is no question that a live controversy exists between her and the County. The only question in her case is whether relief in addition to damages is appropriate. See Id.

On appeal, Giles asks that her claim for injunctive relief be dismissed. However, she continues to seek a

declaratory judgment. Whether declaratory relief is necessary and appropriate to prevent future violations of constitutional rights is a matter to be considered in the first instance by the district court. We therefore remand Giles claim for declaratory relief for consideration in light of the policies expressed in Lyons and Gonzales.

REVERSED AND REMANDED.

APPENDIX B

226 559 F.Supp. 226

Julie Ann Giles, Plaintiff,

v.

Richard (Dick) Ackerman, et al., Defendants.

Civ. No. 81-4151

United States District Court, D. Idaho.

Feb. 9, 1983.

Woman brought action against county sheriff and others, alleging deprivation of constitutional rights in strip search. On cross motions for summary judgment, the District Court, Callister, Chief Judge, held that the strip search did not violate plaintiff's constitutional rights.

Judgment accordingly.

Searches and Seizures Key 7(12)

Strip search of woman on arrest pursuant to warrant for failure to pay parking ticket violations after it was determined that she did not intend to make bond and would be entering perimeter of jail did not violate woman's constitutional rights, notwithstanding that woman was allegedly unaware that tickets had been issued because her husband, who was driving car at the time, allowed them to accumulate and neglected to pay them, where search did not include body cavity search, search was conducted in privacy, there was no touching of woman, and every reasonable courtesy was extended to her. U.S.C.A. Const. Amend 4.

Hopkins, French, Crockett & Springer,

Larry L. Goins, Idaho Falls, Idaho, American Civil Liberties Union, Stephen L. Pever, Denver, Colo., for plaintiff.

Lund and Associates, Lynn J. Lund, Salt Lake City, Utah, Fanning & Radin, John Radin, Idaho Falls, Idaho, for defendants.

MEMORANDUM DECISION

CALLISTER, Chief Judge.

Before the Court on cross-motions for summary judgment regarding plaintiff's claim of deprivation of constitutional rights arising out of the strip search conducted by Bonneville County Sheriff's employees on October 26, 1981. Plaintiff's complaint also alleges that the defendants failed to fully explain bail procedures following her arrest, but that issue is not addressed by the

present motions.

The plaintiff in this action is a young, married woman. The gist of her complaint is that, when arrested pursuant to a warrant for failure to appear and pay parking tickets, Bonneville County authorities failed to adequately explain bonding procedures and conducted a strip search. The parties have stipulated to certain facts which have been filed of record. The parties have not asserted any material issues of fact involving the search of the plaintiff, and the Court finds, as the record reflects, that none exist. Fed.R.Civ.P. 56(c).

The starting point in any Fourth Amendment analysis is the standard of reasonableness. "The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of

'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents...." Delaware v. Prouse, 440 U.S. 648, 653-654, 99 S.Ct. 1391, 1395-96, 59 L.Ed.2d 660 (1979).

The United States Supreme Court, in Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), stated

> [t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Id at 559, 99 S.Ct. at 1884

In Bell, the court further observed that

> [a] detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record, and in other cases .... That there has been only one instance where an MCC inmate was discovered attempting to smuggle contraband into the institution on his person may be more a testament to the effectiveness of this search technique as a deterrent than to any lack of interest on the part of the inmates to secrete and import such items when the opportunity arises.
>
> We do not underestimate the degree to which these searches may invade the personal privacy of inmates. Nor do we doubt, as the District Court noted, that on occasion a security guard may conduct the search in an abusive fashion. Such abuse cannot be condoned. The searches must be conducted in a reasonable manner. But we deal here with the question whether visual body-cavity inspections as contemplated by the MCC rules can ever be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can.

Id., at 559-60, 99 S.Ct. at 1884-85 (citations omitted).

The federal courts have at times sustained strip searches as a matter of routine, see e.g., Inmates of Allegheny Cty Jail v. Pierce, 612 F.2d 754 (3rd Cir. 1979); United States v. Klein, 522 F.2d 296 (1st Cir. 1975); United States v. Bradford, 496 F.Supp. 366 (D.Conn 1980), aff'd 645 F.2d 115 (2d Cir. 1981); Armstrong v. Borie, 494 F.Supp. 902 (E.D.Pa. 1980), and at other times have limited strip searches as a matter of routine. Often, the courts have ruled that the manner in which a strip search is conducted renders the search constitutionally impermissible.

In Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981), cert. denied, 455 U.S. 942, 102 S.Ct. 1435, 71 L.Ed.2d 653 (1982), cited by the plaintiff, the court noted that the strip search was conducted in an improper manner because it was

conducted in a place open to the view of people who might be passing by the window of the room where the search occurred. In Tinetti v. Wittke, 479 F.Supp. 486 (E.D.Wis. 1979), also cited by plaintiff, the district court there felt that, under all the circumstances, the search of non-misdemeanor defendants charged with traffic offenses who were incarcerated because they could not post bond was not justified without some probable cause to believe that the arrestees might have weapons or contraband on their person. The court did not discuss the security problems of the jail or the problems facing the officers who managed the jail, but only the problems with the manner of the strip searches.

In this case, the plaintiff has not argued that the manner in which she was

searched was unreasonable. No search was conducted until it was determined that the plaintiff did not intend to make bond, and that she would be entering the perimeter of the jail until her case came up for hearing. The Court notes that the search here did not include a cavity search and that issue is not before the Court; that the search was conducted in privacy and that there was no touching of the individual; and that every reasonable courtesy was extended to the plaintiff.

The Court recognizes that it is customary in this state, on all minor traffic violations, to permit the violator to sign the citation in agreement to appear at the time specified, and be released upon that signature. The Court also recognizes that it is the practice to give those who are arrested on minor

petty offenses the opportunity to post bond in a reasonable amount before they are processed or searched with regard to incarceration in the jail. In fact, Idaho has adopted a uniform bail schedule for misdemeanor offenses. Idaho Misdemeanor Criminal R. 13.

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The Court recognizes the unusual conditions of this case. The plaintiff was arrested on a warrant for failure to pay parking ticket violations. Plaintiff maintains that she was unaware that the tickets had been issued because her husband, who was driving the car at the time, allowed them to accumulate and neglected to pay them. Therefore, the Court views these circumstances as unusual, and they tend to arouse the sympathy of the Court as well as others concerned with this matter.

Nevertheless, there are other very serious considerations. Courts have long recognized the special dangers associated with jail and prison environments, even when faced with significant Fourth Amendment issues. As noted above, the Supreme Court has observed that "[a] detention facility is a unique place fraught with serious security dangers." Bell v. Wolfish, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979). Other courts have observed likewise and concluded that strip searches may reasonably assist in minimizing these dangers. "Jail authorities may reasonably act so as to exclude contraband from the jail environment." Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 761 (3rd Cir. 1979).

> [W]e find no basis for agreeing ....that the brief strip search ....conducted without abuse and in a professional manner was unconstitutional. A post arrest search of the person....may include requiring a suspect to remove his clothes and a visual inspection of his person. [citations omitted] ....If such procedures were not permissible, it would often be difficult to conduct a thorough search for weapons and contraband."

United States v. Klein, 522 F.2d 296, 300 (1st Cir. 1975). The court in Klein further concluded that "[t]he modesty of one lawfully arrested must give way to reasonable precautionary procedures designed to detect hidden evidence, drugs, or objects which might be used against others or to cause self-inflicted harm." 522 F.2d at 300-01. See Armstrong v. Borie, 494 F.Supp. 902, 905 (E.D.Pa. 1980). In addition to the danger of drugs or contraband in a jail setting, jailers also face the problem of communicable diseases being spread in

the institution.

In order to provide for jail security and safety, the Bonneville County Sheriff instituted a policy of strip searching every person processed into the general jail population area. The necessity of providing jail security is obvious. A weapon of any kind in the hands of an inmate can be a serious threat to other inmates, to the guards and jail personnel, and, in the event of an escape, to the general public. It is likewise true that placing a person with a serious communicable disease in close proximity to others in the crowded conditions of a jail can cause serious problems to inmates as well as to jail personnel. The presence of drugs in the jail may result in uncontrollable behavior by the user, thus presenting a danger to all others in the jail area.

The Court recognizes the chaotic situation which could result were the jail to adopt a policy of leaving the decision to strip search totally in the discretion of jail personnel. In a jail which processes approximately 4,000 people each year, such a procedure would certainly result in multiple litigation arising out of claims of unequal treatment of prisoners.

Plaintiff argues that strip searches of many traffic offenders are not justified by the need for jail security. This argument assumes that all traffic offenders are otherwise law-abiding people. The court is of the opinion that arrested traffic offenders, as a group, could include people who have communicable diseases, people who use drugs and might be carrying them in concealed areas in their body, or people

who use weapons and might be carrying them on their body. Traffic offenders cover the whole gamut of society. When it is necessary to arrest traffic offenders, and they must therefore enter the perimeter of the jail because they cannot make bond, it appears to this Court that the security of the jail requires that these persons be searched just as any other arrestee.

In reaching a decision on this issue, the Court also recognizes the right of the other

inmates in the jail to be protected from any danger that might result from an improper search allowing contraband of weapons or drugs, or communicable disease into the jail.

Perhaps the issue would be best resolved by legislatively imposed standards rather than judicial intervention into jails and prisons. Legislative bodies could pursue these matters after adequate investigation and debate, considering all aspects of the problem, unlike the Court which is limited to the matters in the record.

The Court notes that, although the law was not effective at the time this arrest and search occurred, Idaho recently enacted legislation which reduces the likelihood of arrest for many traffic violations. In 1982, the Idaho legislature passed the Idaho Traffic Infractions Act which creates a new classification of offense for many traffic violations. Idaho Code Sections 49-3401 to -3412 (effective March 1, 1983). The Act defines an infraction as "a

civil public offense not constituting a crime, which is punishable by a penalty not exceeding one hundred dollars ($100.00) and for which no period of incarceration may be imposed." Idaho Code 18-111. The Court recognizes that this decriminalization of many traffic offenses should reduce the possibility of arrest and pre-trial incarceration arising out of such minor offenses.

When all of these matters are considered, the Court is of the opinion that the search in this case did not violate the constitutional rights of the plaintiff. Accordingly, the defendants are entitled to summary judgment on that issue.

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No. 84-1317

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

RICHARD (DICK) J. ACKERMAN, et al.,
Petitioners,

—v.—

JULIE ANN GILES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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March 1985

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QUESTION PRESENTED

Whether the Ninth Circuit correctly held, as every other court to consider the issue has held, that jail officials may not strip search a person arrested for a minor traffic offense without a reasonable suspicion to believe that contraband will be found?

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STATEMENT OF THE CASE

The parties submitted this case to the district court on a stipulated set of facts. See Giles v. Ackerman, 746 F.2d 614, 615 (9th Cir. 1984)(per curiam). For some unexplained reason, petitioners have submitted the case to this Court on a different set. They have eliminated numerous important stipulations and have substituted allegations of their own. The facts as stipulated to by the parties in the district court are as follows:

During the afternoon of October 26, 1981, plaintiff Julie Giles, then 29 years old, was driving her car in Idaho Falls, Idaho, the town in which she lived, when city police officer Martin Bazar stopped her. Officer Bazar informed Ms. Giles that her car registration had expired. Upon making a computer check, Officer Bazar learned that an

arrest warrant had been issued for Ms. Giles some six months earlier for failure to appear on several parking tickets. The officer placed Ms. Giles under arrest, put her in the back seat of his patrol car, and took her to the Bonneville County Jail.

According to Officer Bazar, Ms. Giles was "most cooperative" during the entire time he was with her, even though she seemed surprised to learn of the arrest warrant. (As it turned out, the parking tickets had been issued to her husband, and Ms. Giles was unaware of them.) At no time did the officer frisk, pat down, or handcuff Ms. Giles or feel in any danger from her. The officer allowed Ms. Giles to keep her pocketbook without inspection. Upon their arrival at the jail, Officer Bazar escorted Ms. Giles to the central booking area, where he gave her a copy of the arrest warrant and issued her a citation for the expired registration. He

then remanded her to the custody of jail officials and left the jail.

Ms. Giles had never been arrested before. When she first walked into the control center, a jail officer asked her if she would be bonding out. She replied that she did not have any money with her and that her husband was out of town. The officer then asked if she had any friends who could help her bond out. Ms. Giles replied that there was no one she could think of who would bond her out.

For the next 15 or 20 minutes, no one spoke to her. After a while, she got up and walked around the control center, looked into some of the cells, and walked up and down the corridor. Following this period of time, Officers Elaine Shumway and Jere Doten began the booking procedure. They catalogued the items in Ms. Giles's purse, took medical and biographical information from Ms. Giles, and

fingerprinted and photographed her. After a telephone call by Officer Doten, Ms. Giles was informed that her bail had been set at $157. The booking procedure lasted approximately 35-45 minutes. At no time before or during the booking procedure was Ms. Giles informed that she would be strip searched.

It is defendants' policy to strip search all persons who are to be housed in the Bonneville County Jail. Section 501.03(5) of the Jail's "Policies and Procedures Manual," promulgated by defendants on January 1, 1981, states as follows:

> The subject will then be placed in the booking cell, and all items and clothing removed, strip searched, and all property receipted for on the arrest record. (Emphasis added.)

Jail officers are given training on how to conduct the strip search. These officers are shown a film which demonstrates how the strip search is to be conducted on both male and

female prisoners. The search requires the arrestee to remove all clothing, face the wall, bend over and expose the anal and genital areas for visual inspection, turn around and raise the arms for inspection of the armpits, show the ears for inspection, and run their fingers through the hair on their head. In addition, all clothing is thoroughly inspected. Defendants' strip search policy is "non-discriminatory," that is, all arrestees entering the general jail population, even for a short period of time, must first undergo a strip search in strict adherence to the procedure outlined above.

After Ms. Giles had been booked, Officer Shumway took her into a cell located within the control center. There, Ms. Giles was asked to remove all of her clothing. She was then subjected to a strip search, although Officer Shumway decided not to require Ms. Giles to bend over. According to the

officer, this part of the search was not necessary in this instance.

Ms. Giles was very embarrassed by the strip search, even though Officer Shumway extended to Ms. Giles "all due courtesy." Dep. of Shumway at 40. This embarrassment was apparent to Officer Shumway, who described the plaintiff as having been "very upset by it" and "embarrassed." Id. at 23.

Officer Shumway was asked during her deposition whether she would not have strip searched Ms. Giles had she not been compelled to do so by the Policies and Procedures Manual. She replied, "If I weren't compelled to, no, I probably would not have.... She was well-dressed. She was clean and neat. Her charges weren't the type [to suggest the need for a strip search].... I would not have strip searched Julie Giles, no, because of the charges and from everything considered." Id. at 54-55.

Following the strip search, Ms. Giles telephoned her husband's office and was connected with her husband, who was calling his office at that same moment from out-of-town. Ms. Giles asked him to return to Idaho Falls and to get her out of jail. Mr. Giles arrived about an hour later, posted bond, and Ms. Giles was released from jail.

REASONS FOR DENYING THE WRIT

A. The Case Does Not Merit Review

Nothing in the decision below warrants review. It is narrowly tailored to the unique facts of the case. The Ninth Circuit specifically declined to address the broad question concerning the jail's body cavity search policy--a policy which applied to all inmates of the jail--and instead decided the much narrower question of whether the strip

search of Julie Giles, arrested for a minor traffic offense and temporarily unable to post bond, was valid. Giles v. Ackerman, 746 F.2d at 616 n.2. The court's decision directly applies only to those relatively few persons who are unable to post bond for a minor offense.

Few jails routinely engage in the practice challenged here--the strip searching of persons arrested for minor traffic offenses. There is no need for this Court to review a decision that has such limited application and is narrowly drawn to the unique facts of this case.

B. The Decision Below Does Not Conflict With Any Federal Court Decision.

Four United States Courts of Appeals have considered the constitutionality of routine strip searches of persons arrested for minor offenses. All four courts have

reached the same conclusion: reasonable and individualized suspicion is required before the strip search may be conducted. Giles v. Ackerman, 746 F.2d 614 (9th Cir. 1984) (per curiam); Hill v. Bogans, 735 F.2d 391 (10th Cir. 1984) (holding unconstitutional a strip search far less intrusive than the one that happened here);[1] Tikalsky v. City of Chicago,

---

[1] Petitioners contend that the strip search of Julie Giles was so attenuated as to require special review of this case. This contention has no basis in fact or in law. This was hardly a cursory search. As the stipulated facts reveal, Ms. Giles was required to remove all of her clothing in the presence of a jail officer, face the wall, raise her feet so that her soles and toes could be inspected, turn around and raise her arms for the inspection of her armpits, show her ears for inspection, and run her fingers through the hair on her head. As the Ninth Circuit stated: "The parties do not dispute the nature of the intrusion. They agree that Giles's privacy was invaded in a frightening and humiliating manner." Giles v. Ackerman, 746 F.2d at 617.

As a matter of law, the intrusion here cannot be minimized. In forcing Ms. Giles to remove all of her clothing, the police conducted the most intrusive type of search in the law of search and seizure. "Body searches are unique in the nature of the intrusion on personal privacy.... [C]ourts are always careful to respect the higher privacy interests involved in body searches." Hall, Search and Seizure 507 (1982); cf. Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982)
[cont'd. on next pg]

687 F.2d 175 (7th Cir. 1982); Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981), cert. denied, 455 U.S. 942 (1982).

Thus the decision below does not conflict with any federal court decisions or with any decision of the Supreme Court. Although petitioners contend that such cases as United States v. Edwards, 415 U.S. 800 (1974), and Illinois v. Lafayette, ___ U.S. ___, 77 L.Ed.2d 65 (1983), support their view, those cases belie petitioners' claim. Indeed, the Court specifically stated in Lafayette, 77 L.Ed.2d at 71 n.2: "We were not addressing in Edwards, and do not discuss here, the circumstances in which a strip search of an arrestee may or may not be appropriate."

Petitioners also mischaracterize this Court's decision in Bell v. Wolfish, 441 U.S.

("Indeed, a strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience.").

520 (1979), by arguing that Bell upheld body cavity searches that were more intrusive than the "disrobement" in this case. Bell was not a wholesale endorsement of body cavity searches; rather, the Court balanced the private and governmental interests at stake and thereby rejected the inmates' claim that body cavity searches could never be conducted on less than probable cause following contact visits with persons from outside the detention facility. 441 U.S. at 558-60. In the present case, the court below undertook a thorough balancing of the factors deemed relevant in Bell. As the court below held, and as every other court to address the issue has held, Bell does not condone all strip searches under all circumstances. See, e.g., Hill v. Bogans, 735 F.2d at 393-94; Mary Beth G. v. City of Chicago, 723 F.2d 1263, 1273 (7th Cir. 1983); Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982); Logan v. Shealy,

660 F.2d at 1013.

C. The Decision Below is Eminently Correct

The decision below is a careful application of the Fourth Amendment reasonableness standard. The decision delicately balances a jail's interest in security with an individual's interest in personal privacy. It holds that jail officials may protect their security interests by conducting a strip search, but, as applied to persons arrested for minor traffic offenses, this intrusive search may occur only when there is a reasonable belief that contraband will be found. A reasonable belief may be grounded upon any one of numerous factors, including the nature of the offense, the arrestee's appearance, conduct, and prior arrest record. Giles v. Ackerman, 746 F.2d at 617; cf. Dufrin v. Spreen, 712 F.2d 1084 (6th Cir. 1983) (person arrested for felonious assault may be subjected to

visual body cavity search at the jail).

Four federal courts of appeals have considered this issue, and all four have reached the same conclusion. See supra at 9-10.[2] There must be some "objective standard," Delaware v. Prouse, 440 U.S. 648, 654 (1979), against which to judge the conduct of jail officials in cases of this nature. The Ninth Circuit was eminently correct in adopting a reasonableness standard given the fundamental interests at stake, and every other court to consider this issue has done the same. The Ninth Circuit then conducted an extensive review of the relevant factors and concluded

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[2] In addition, at least six other federal court decisions have imposed a similar restriction on jail officials regarding the use of body cavity searches. See Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1983); Salinas v. Breier, 695 F.2d 1073 (7th Cir. 1982), cert. denied, ___ U.S. ___, 78 L.Ed.2d 118 (1983); Bovey v. City of Lafayette, 586 F. Supp. 1460 (N.D. Ind. 1984); Hunt v. Polk County, 551 F. Supp. 339 (S.D. Iowa 1982); Tinetti v. Wittke, 479 F. Supp. 486 (E.D. Wis. 1979), aff'd per curiam, 620 F.2d 160 (7th Cir. 1980); United States ex rel. Guy v. McCauley, 385 F. Supp. 193 (E.D. Wis. 1974).

that the jail policy was not reasonable under the circumstances.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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